Psychiatry's Threat to Civil Liberties

Only one man can deprive the non-criminal of his freedom, warns the author, in a sober review of a dangerous trend in commitment procedures

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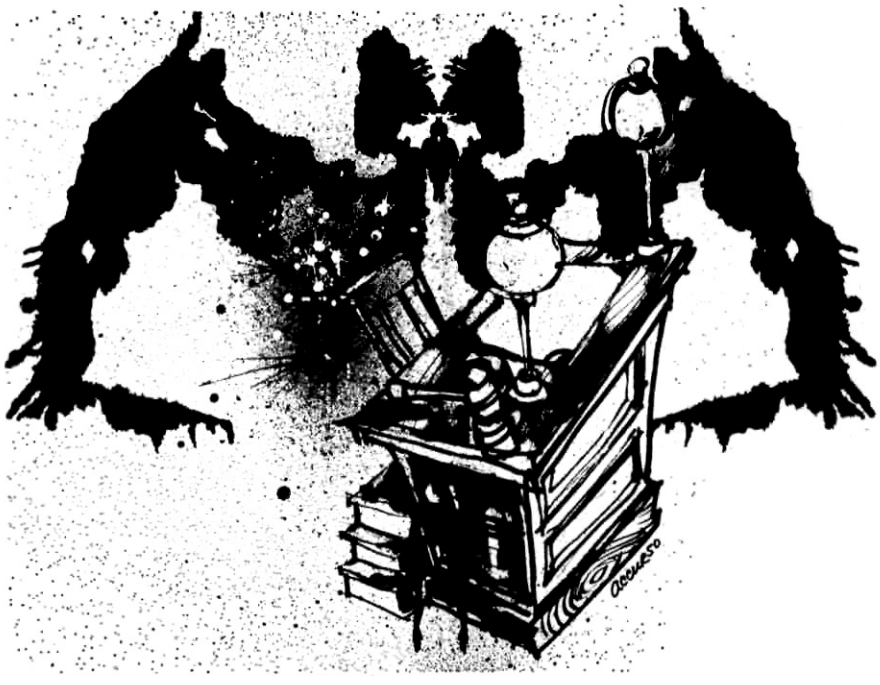
When President Kennedy sent to the Congress early in February his message on mental illness, he drew attention to the size of the problem in economic terms: 600,000 Americans are in mental institutions (some experts say one in every ten Americans is mentally ill); half the hospital beds in the nation are for mental patients; billions of dollars are spent yearly for psychiatric services. But I do not propose to discuss mental illness as a threat to American society. Rather, I want to discuss modern psychiatry as a threat to traditional American liberties.

How does psychiatry endanger liberty? In many ways, but here are two of the most important. First, no professional person but a psychiatrist is empowered by law to deprive people of their freedom when they have not been convicted of a crime. This is called commitment or involuntary mental hospitalization. Second, only psychiatrists are empowered by law to declare persons accused of a crime mentally sick and hence unfit to stand trial. This is called pre-trial psychiatric examination. Its victims are deprived of the right to trial guaranteed by the Sixth Amendment to the Constitution, and are incarcerated for an indefinite term in "hospitals" for the criminally insane.

Civil commitment is, of course, nothing new. Before the days of modern psychiatry, the alienists—as psychiatrists were then called—were essentially jailers. They confined, and kept out of society's hair, not only the insane, but also the destitute, the incurably ill, and the petty criminal. Out of this undifferentiated prison-hospital the modern public mental institution arose. To a large extent, it fulfills the same social needs today. Nearly one third of the inmates of state hospitals are old men and women, "technically" not mentally ill (even in the view of those who run these hospitals), but with no place to go; another group is composed of minor offenders who are not prosecuted, but instead are committed as mental patients. Finally, even those considered mentally ill are hospitalized not so much because they are "ill" but because they annoy others.



A Special Case?

Some readers may object. My emphasis—they may wish to point out—is misplaced: after all, is it not true that mental illness is just like any other illness? When mental patients are hospitalized, willingly or not, isn't it for their own good?

No, and here's why:

If mental illness is like any other, why are more than 90 per cent of the patients in public hospitals confined against their will? Why are they deprived of the right to vote, make telephone calls, write uncensored letters, drive a car? These are only the most flagrant deprivations of their liberties.

If mental illness is like any other, why is the hospital practice of psychiatry almost completely socialized? And why are the American Medical Association and the American Psychiatric Association pleased with this arrangement, despite the fact that they are the leading advocates of "free medicine" for non-psychiatric illness? (The American Medical Association, for example, opposes medical aid for the elderly through social security, but approves of psychiatric aid to anyone—young or old, rich or poor—financed through federal and state taxation.)

If mental illness is like any other, why do many mental hospitals housing thousands of patients have no more than a half-dozen physicians on their staff? Do so few doctors care for so many patients in *any* non-psychiatric hospital?

And if mental illness is like any other, why does the law recognize a special psychiatric plea—insanity;

and a special psychiatric verdict—"not guilty by reason of insanity"; and a special psychiatric sentence—commitment for an indefinite period to a hospital for the criminally insane? Can a person plead that he is not guilty of an offense because, when he committed it, he suffered from pneumonia? Or hypertension? Or cancer? Can he be acquitted for such medical illnesses? Or sentenced to imprisonment in a medical institution that is *not* psychiatric?

A moment's reflection should convince anyone either that mental illness differs significantly from physical illness, or if not, that it is treated very differently in our present-day society. These considerations, and others more technical, have led me to suggest that *mental illness is a myth.* By this I mean that mental illness is a metaphorical expression. Just as we call people physically ill when their body functioning violates certain anatomical and physiological norms, so we call people mentally ill when their personal conduct violates certain ethical, political, or social norms. This explains why many historical figures, from Jesus Christ to Castro, from Job to Hitler, have been diagnosed as suffering from this or that psychiatric malady.

Menace to Freedom

Psychiatrists thus menace a free society through their power to commit a person as mentally ill, to treat him against his will, and to keep him incarcerated indefinitely. To be sure, there are some safeguards against the most flagrant abuses of these powers; but they are inadequate. This is so partly because the very basis for involuntary hospitalization—mental illness—is an ill-defined and misleading concept.

Psychiatrists also menace a free society through their power to subvert constitutional rights by claiming that a person is not a citizen with certain inalienable rights but a mental patient in need of "treatment." This maneuver of transforming a person from citizen to "mental patient" is best illustrated by the pre-trial psychiatric examination of offenders. By means of this procedure Ezra Pound was hospitalized as mentally sick for fourteen years. Recently the government sought to submit General Walker to this treatment. It is in this way that thousands of lesser men, who never make the headlines, lose their freedom—sometimes for life, and often for crimes they did not commit, or if they did, for which sentences would be relatively short.*

Not so many years ago, the plea of insanity was a tactic reserved for the defense. It was used mainly in capital offenses. The plea implied that the accused admitted committing the acts charged, but hoped to escape the death penalty by throwing himself on the mercy of the court and offering to go to a mental hospital, for life if necessary.

But the psychiatrically "enlightened" person of today is supposed to have a more "sophisticated" view of this problem. He *knows* that some people are mentally ill. He also *knows* that such people are not responsible for their actions, and that it would therefore be inhuman to judge and punish them. How he knows this, I do not know. Nor do I know why such self-styled psychiatric Liberals think that incarceration in a psychiatric hospital is *not* punishment. Nevertheless, these are their self-proclaimed premises and beliefs.

This creates a new situation. If insanity is a disease like any other, its determination can no longer be of interest solely to the defense. The prosecutor, the judge, indeed anyone may now take part in it, and rationalize his act as humane interest in the welfare of the defendant. This opens up undreamed-of possibilities for psychiatric abuses.

For the prosecution, establishing the defendant's insanity instead of his guilt may become an easy method of securing "conviction" and "imprisonment"; the defendant found unfit to stand trial will be incarcerated in a psychiatric institution for an indefinite period—a sentence at least as severe as might result from conviction and imprisonment.

To the judge, too, establishing the defendant's incapacity to stand trial may be tempting; it will save him the effort of conducting a trial that may be filled with distressing emotional and moral dilemmas. Both he and the jury will be spared a taxing experience, if only the defendant can be shown to be crazy.

For the psychiatrist, finding the defendant mentally disabled may be appealing for still another reason: "diagnosing" signs and symptoms of mental *illness* proves the reality of this mythical disorder. Pre-trial psychiatric examination of offenders thus lends support to the idea that the determination of an individual's ability to stand trial is properly a psychiatric affair. But how could it be? Are we asked to believe that, regardless of their "mental health," two persons as different as, say, a professor of political science and a janitor are equally able to assist counsel in their defense? Fitness to stand trial, like fitness to perform any task competently, is relative. Nor is it clear why psychiatrists should be particularly well qualified to judge it. If we are really interested in a defendant's ability to stand trial, could it not be better assessed by his own lawyers, than by psychiatrists? Could it not be better assessed by the judge, on the basis of the defendant's actual conduct in the courtroom, than on the basis of his performance in psychiatric interviews interpreted by psychiatrists with a vested interest in "mental illness"?

These are only a few of the more obvious incentives and seductions (I do not mention money, power, prestige) that may motivate men to use psychiatry without regard for the rights guaranteed by the Constitution and the Bill of Rights.

Consider the case of General Walker. When arrested, he asked the judge if he would be tried in Mississippi, where the alleged crime took place. When assured that he would, he

*Example: in 1958 a young man was, without benefit of a trial, confined to a New York State hospital for the criminally insane, on suspicion of murder, and because he insisted on his innocence based on a very bizarre story. He stuck to his story for four years of "mental" imprisonment, during which time he was examined by nine different psychiatrists on seventeen different occasions, and he would be imprisoned even now if a Long Island attorney had not become interested in the case. The attorney simply investigated the actual facts and found the young man's story to be true. He was released from mental prison; all charges against him have been dropped; he is free. And so are the nine psychiatrists.

waived preliminary hearing. But instead of moving to try him, the government held him without bail as a suspected mental patient. Walker's attorneys managed to secure his release, on bail, but only on condition that he would submit to psychiatric examination within five days.

Questionable Procedures

General Walker's psychiatric examination was instigated by a psychiatrist in the employ of the U.S. Bureau of Prisons, who never examined Walker. He sent a telegram to the federal judge in Oxford, Mississippi, suggesting that Walker undergo psychiatric examination to determine his fitness to stand trial. The judge thereupon ordered the examination.

If uncontested, the examination would have been carried out by government psychiatrists at the Federal Medical Center in Springfield, Missouri. Is this sound procedure, particularly since the U.S. Government is a party to the litigation against Walker? Yet, this is how the law stands, and how it is ordinarily administered. Imagine that instead of General Walker, the defendant is John Doe. How would *he* defend himself against the charge—for that's what it is—of mental illness? Could he find an attorney to represent him? Lawyers are loath to accept such cases, and they cannot be blamed too much for this; after all, they have been trained to protect their clients from accusations of crime, not of mental illness! But even if John Doe should succeed in retaining an attorney, his defense would be worthless without positive psychiatric testimony. He would need one or more psychiatrists to testify that he *is* capable of standing trial. Could he find such psychiatrists? Could he pay them?

The psychiatric threat to liberty hits the American people where they are most vulnerable—in their unremitting desire to be helpful. By offering to diagnose and treat an illness (not to control social conduct), psychiatrists are permitted to do what no one else may do—namely, deprive Americans of their constitutional rights. The crux of the matter lies in the definition of psychiatric action, especially in the courtroom. Is it a medical function, whose aim is to promote the health of the individual and of the community? Is it a punitive function, whose aim is to control deviant behavior and thus protect the comfort and safety of the community? Is it an ideological function, whose aim is to promote, under the guise of a quasi-scientific jargon, the ethic of a psychiatric elite?

The fact is that a person accused of crime may refuse, under the Fifth Amendment, to answer certain questions on the ground that he may incriminate himself. But what about the pre-trial psychiatric examination of a defendant who does not himself plead insanity? Could *he* refuse to submit to such an examination on the ground that the Sixth Amendment guarantees him the right to speedy and public trial? The answer will depend entirely on whether the pre-trial psychiatric examination is considered beneficial or detrimental to the defendant. If detrimental, then it is "punishment," and the accused is entitled to the protection of the Constitution. If it is deemed beneficial, however—and is regarded as a diagnostic procedure necessary to establish whether or not the defendant is mentally "sick," in order better to protect his own interests—then constitutional guarantees are so far considered to be completely irrelevant to it.

Social control disguised as psychiatric therapy offers unlimited possibilities for tyranny, and we should, at the very least, be conscious of the dangerous path we are now treading.

Special Report

What's in Store for Iraq

SUSAN HUCK

Abdul Karim el-Kassem, late dictator of Iraq, went out the way he came in. He was personally responsible for the brutal murders which accompanied the *coup* of July 14, 1958; he met an equally summary and brutal death at the hands of his successors. It rarely works out so neatly. But there was one element of irony. What ultimately brought about Kassem's downfall was not that he was too ruthless but that he was not ruthless enough. Four years ago one of Kassem's military tribunals sentenced Abdul Salam Aref —the present strongman—to death for his part in a plot to murder Kassem. And Kassem let him off. They had been close friends and fellow-conspirators. When Kassem's Bastille Day revolution exploded on a hot July morning in 1958, it was Aref, a colonel in Kassem's division, who actually seized Baghdad; Kassem himself held the rest of the force in reserve. This was the kind of soldierly friendship Kassem found hard to forget; because of it, he spared Aref's life. Aref show no such compunction when his moment came.

The new regime is already many things to many people. At the moment, it is cracking down on the powerful Communist Party in workmanlike fashion, showing a realistic approach to power politics which Kassem never demonstrated. Whether the Communists were within an ace of taking over, as the new leaders proclaim, is uncertain. They came close to seizing power last July, and Aref is taking no chances. In the last fortnight his forces are reported to have rounded up ten to twenty thousand Communists or pro-Communists.

The Neutral Course

Almost the first gesture the new regime made was to proclaim its neutrality, an eminently sensible course for a country such as Iraq, in view of the courtly attitude our government takes toward neutrals. And it has yet to make any overtly anti-Western gesture, which is an improvement over Kassem, who was essentially anti-Western rather than pro-Communist. Like so many Arabs, Kassem burned at what he believed to be a British and American double-cross in the matter of Israel. He believed that Nuri as-Said, the brilliant and staunchly pro-Western Prime Minister whom he overthrew and murdered, was an agent of British imperialism, and attacked him as such.

Iraq's foreign policy is in for one certain drastic revision: it will be less Moscow- and more Cairo-oriented. It was over the question of